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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**
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12 CARLOS RIOS,
13 CDCR #E-52249,

14 Plaintiff,

15 vs.

16 D. PARAMO; R. BLAHNICK;
17 K. BALAKIAN; B. CROTTS;
18 B. MILLUM; A. HERNANDEZ;
19 R. OLSON; J. RAMIREZ,

20 Defendants.

CASE NO. 13cv2455-WQH-
JMA

ORDER

21 HAYES, Judge:

22 The matter before the Court is the Motion to Enforce Settlement filed by
23 Defendants. (ECF No. 53).

24 **I. Background**

25 On October 10, 2013, Plaintiff Carlos Rios, currently incarcerated at Richard J.
26 Donovan Correctional Facility (“RJD”), commenced this action by filing a Complaint
27 pursuant to 42 U.S.C. Section 1983 (ECF No. 1) and a motion for leave to proceed in
28 forma pauperis (ECF No. 2). The Complaint asserted claims for violations of the First,
Eighth, and Fourteenth Amendments. On March 25, 2014, the Court granted the
motion for leave to proceed in forma pauperis, dismissed the Complaint for failure to
state a claim, and granted Plaintiff forty-five days to file a First Amended Complaint

1 (“FAC”). (ECF No. 5).

2 On May 12, 2014, Plaintiff filed the FAC, which is the operative complaint in
3 this case. (ECF No. 9). The FAC asserts claims for violations of the First, Sixth,
4 Eighth, and Fourteenth Amendments, and violations of the Americans with Disabilities
5 Act and Rehabilitation Act. Plaintiff alleged that Defendants required him to choose
6 between outdoor exercise and attending the law library. Plaintiff alleged that
7 Defendants refused him the reasonable accommodation of placement in a
8 developmental disability program, which includes legal assistance. Plaintiff alleged that
9 Defendants retaliated against him for complaining about these issues by charging him
10 with a false “128-B general chrono” on August 8, 2013, and that the appeals coordinator
11 did not properly process his inmate appeals. *Id.* at 9-10.

12 On January 14, 2015, United States Magistrate Judge Jan M. Adler held a
13 telephonic case management conference. (ECF No. 23). On January 14, 2015, the
14 Magistrate Judge issued an Order Scheduling Telephonic Mandatory Settlement
15 Conference for February 24, 2015, at 9:30 a.m. (ECF No. 24). On January 27, 2015,
16 Plaintiff filed a motion to change the time of the settlement conference in this case from
17 9:30 a.m. to 10:45 a.m. on the same date because Plaintiff was scheduled to appear at
18 a “court settlement conference at the same date and time in the Superior Court of
19 California, County of San Diego, Hall of Justice for Case No. 37-2014-0036-102-CU-
20 WM-CTL at Dept. C-67 on February 24, 2015, at 9:30 a.m.” (ECF No. 26 at 1). On
21 January 29, 2015, the Magistrate Judge issued an order resetting the settlement
22 conference to February 25, 2015, at 9:30 a.m. (ECF No. 27).

23 On February 2, 2015, Plaintiff filed a “Motion for Extension of Time and Request
24 to be Relieve [sic] from this Court’s Order Convening a Case Management Conference
25” (ECF No. 29). The motion again requested that the settlement conference be
26 continued to 10:45 a.m. on February 24, 2015, because Plaintiff was scheduled to
27 appear in San Diego Superior Court at 9:30 a.m on February 24, 2015. On February 2,
28 2015, the Magistrate Judge granted the motion in part and again stated that the

1 settlement conference was continued to February 25, 2015, at 9:30 a.m. (ECF No. 30).

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3 On February 25, 2015, the Magistrate Judge held the telephonic settlement
4 conference. (ECF No. 33). On February 25, 2015, the Magistrate Judge issued an
5 Order stating that the case settled “and the terms of the settlement were placed on the
6 record.” (ECF No. 34 at 1). The transcript of the on-the-record portion of the February
7 25, 2015 settlement conference provides, in pertinent part,

8 The Clerk: Case Number 13cv2455, Rios vs. Paramo, placing settlement
9 on the record.

10 The Court: Good Morning. May I have appearances, please.

11 Mr. Sheehy: Yes, Your Honor. Good Morning. This is Terrence Sheehy
12 on behalf of Defendants.

13 Mr. Rios: My name is Carlos Rios on behalf of petitioner.

14 The Court: All right. Thank you. The parties have reached a settlement
15 after a second settlement conference held this morning. I thank you for
16 your efforts in successfully reaching this settlement. And Mr. Sheehy, if
17 you will please put the terms of the settlement on the record.

18 Mr. Sheehy: Thank you very much, Your Honor. Yes. The Defendants
19 from CDCR agree to settle this case without an admission of liability for
20 an amount of \$1,000, in exchange for Mr. Rios’ signature on a dismissal
21 and the settlement agreement and release and a payee data form. This
22 settlement covers all claims and allegations and defendants in the case of
23 Carlos Rios vs. D. Paramo and others, 13cv2455 in the Southern District
24 of California, and all past or current employees of CDCR. This settlement
25 is inclusive of all costs and attorney’s fees. Have I read the settlement
26 terms correctly sir?

27 Mr. Rios: Yes, sir.

28 The Court: All right. And Mr. Rios, do you agree to the settlement terms?

Mr. Rios: Yes, I agree, Your Honor.

The Court: All right. Thank you. All right. Again, I thank both sides for
your efforts to reach this settlement.

...

Mr. Rios: Your Honor –

Mr. Sheehy: Your Honor, may I have one more moment?

The Court: Yes.

1 Mr. Sheehy: I apologize. Mr. Rios, during our previous discussions,
2 indicated that he's willing to dismiss Warden Paramo and Correctional
Officer M., as in Michael, Zuniga from –

3 Mr. Rios: Suniga. Suniga, S-U-N-I-G-A.

4 Mr. Sheehy: – From another lawsuit. Is that correct, Mr. Rios?

5 Mr. Rios: The property claims, yeah, I'm willing to.

6 Mr. Sheehy: Okay. That's all I wanted to get on the record, Your Honor.

7 The Court: All right. Thank you again, gentlemen.

8 (ECF No. 53-2 at 4-7).

9 The Magistrate Judge ordered the parties to file a proposed order for dismissal
10 on or before March 27, 2015. (ECF No. 34). On March 9, 2015, Plaintiff attempted to
11 file an opposition to Defendants' proposed settlement agreement and a request for a
12 follow up settlement conference. (ECF No. 35-1). The Magistrate Judge rejected the
13 document for filing on the ground that settlement documents are not to be filed with the
14 Court. (ECF No. 35).

15 On May 1, 2015, Defendants filed the Motion to Enforce Settlement. (ECF No.
16 53). Defendants contended that "Plaintiff refused to sign the [settlement agreement]
17 and 'opposed' the settlement agreement, claiming that defense counsel and Magistrate
18 Judge Adler misled him into believing he was settling his property claim . . . in another
19 case." (ECF No. 53-1 at 6). In defense counsel's declaration, counsel stated that during
20 the settlement conference,

21 I specifically identified Plaintiff's claims in this case. I discussed
22 Defendants' legal and factual argument in support of its defense of those
23 claims. For instance, in discussing Plaintiff's access-to-courts claim, I
24 identified certain documentary evidence, prison law library logs, that show
25 Plaintiff was provided access to the law library [W]e reached a
26 settlement where Plaintiff agreed to dismiss his claims in this litigation in
27 exchange for \$1,000. The court placed Plaintiff and me on hold so that we
28 could be transferred to the court room telephone and the settlement could
be read onto the record. During that time on hold, Plaintiff also agreed,
sua sponte, to dismiss his property claims Neither Magistrate Judge
Adler nor I ever brought up or broached any claim Plaintiff may have had
for lost property.

(ECF No. 53-3 at 2). Defendants requested that the court “issue an order enforcing the terms of the settlement” (ECF No. 53-1 at 16).

On May 18, 2015, Plaintiff filed a response opposing on grounds that defense counsel had discussed Plaintiff’s state court claim prior to going on the record with the intent to mislead Plaintiff. (ECF No. 59 at 6). Plaintiff also opposed on grounds that defense counsel took “unreasonable advantage of a weaker party” and that Plaintiff believed he was only settling his state court property claim when he settled this case on the record. *Id.* at 6-7. Plaintiff also contended that “no case number was provided” during the settlement conference and that he was “rushed” to enter into an oral settlement agreement on the record. *Id.* at 5. Plaintiff requested an evidentiary hearing. *Id.* at 14.

On July 23, 2015, the Court issued an order. (ECF No. 66). The Court concluded that “fraudulent inducement will not preclude enforcement of the settlement agreement.” *Id.* at 8. The Court also concluded “that an alleged unilateral mistake of fact due to the fault of Defendants’ counsel will not preclude enforcement of the settlement agreement.” *Id.* at 10. The Court ordered the parties to submit supplemental briefing to address whether the contract could be rescinded on the ground of unilateral mistake of fact under the four *Donovan* factors. *Id.* at 11; *see Donovan v. RRL Corp.*, 27 P.3d 702, 716 (Cal. 2014) (describing the four factors that a party must establish to rescind a contract on the ground of unilateral mistake of fact). Specifically, the Court ordered the parties to address the following,

Assuming that Plaintiff was actually mistaken with respect to the claims he settled on the record, the parties shall file supplemental briefs addressing the following issues:

1. whether the alleged mistake has a material effect upon the agreed exchange of performances that is adverse to Plaintiff;
2. whether Plaintiff bears the risk of the mistake; and
3. whether the effect of the mistake is such that enforcement of the contract would be unconscionable.

Id. The Court ordered Defendants to file a supplemental brief no later than August 10,

2015 and Plaintiff to file a response no later than August 31, 2015. *Id.* The Court stated that Defendants may file a reply no later than September 8, 2015. *Id.*

On August 10, 2015, Defendants filed supplemental briefing in support of Defendants' Motion to Enforce Settlement. (ECF No. 68). On August 19, 2015, Plaintiff notified the Court that he had not received Defendants' supplemental brief. (ECF No. 69). On August 20, 2015, Defendants submitted an amended certificate of service. (ECF No. 70). On August 26, 2015, Plaintiff filed an Ex Parte Motion for Leave to Exceed Page Limit. (ECF No. 73). On August 26, 2015, the Court granted Plaintiff's motion. (ECF No. 74). On August 26, 2015, Plaintiff filed a response to Defendants' Supplemental Brief and Application for Reconsideration Under CivLR 7.1(i)(1). (ECF No. 73). The docket reflects that Defendants have not submitted a reply.

II. Contentions of the Parties

Defendants contend that "Plaintiff cannot establish that the *Donovan* factors warrant a rescission of the parties' settlement agreement." (ECF No. 68 at 1). Defendants contend that Plaintiff's "mistake of not knowing which case he was appearing on, or which claim he was settling" was not the type of "good faith error that would support rescission." *Id.* 2-3. Defendants contend that Plaintiff's "alleged confusion" was not "mere negligence." *Id.* at 2. Rather, Defendants contend that Plaintiff's mistake was caused by the neglect of a legal duty and "resulted from [Plaintiff's] failure to act in accordance with reasonable standard of fair dealing in preparing for the settlement conference." *Id.* Defendant contends that a

reasonable litigant exercising the requisite diligence in preparing his or her case for a settlement conference, would be, at minimum, expected to review the pleadings and discovery, have a command of the facts and legal theories involved, have examined the strengths and weaknesses of the case, and done his or [her] best to establish a monetary value of the claims.

Id. at 4.

Defendants contend that "the mistake does not have a material effect upon the

1 agreed exchange of performances.” *Id.* Defendant contends that “[a]lthough Plaintiff
2 may now allege that his case is worth more than the agreed settlement amount,
3 [Plaintiff] still benefits from the settlement.” *Id.* Defendants contend that “Plaintiff
4 cannot show that the alleged resulting imbalance of enforcing the settlement is so severe
5 that it would be unfair to require him to perform his obligations under the agreement.”
6 *Id.* at 5. Defendants further contend that “Plaintiff’s neglect of his legal duty . . .
7 necessarily means that the risk of mistake must be allocated to [Plaintiff].” *Id.*
8 Defendants contend that it “would not be unconscionable to enforce the settlement
9 agreement because Plaintiff had notice of the settlement conference, he had time to
10 prepare, the parties engaged in an arm’s –length negotiation overseen by the Magistrate
11 Judge, and Plaintiff agreed to settle all claims on the record.” *Id.* at 6.

12 Plaintiff requests that the Court “reconsider [its] previous order (re ECF No. 66)”
13 because “there is a genuine issue of material facts as to whether Plaintiff’s agreement
14 to settle this litigation was obtained by undue influence, duress, [or] fraud” (ECF
15 No. 73 at 14-15). Plaintiff contends that his mistake “was not even mere negligence.”
16 Rather, Plaintiff contends that “his lacking of notice was attributed by defendants’
17 subordinates intentional interference with Plaintiff’s legal mail from this Court and that
18 such concealment . . . was the cause of his confusion resulting in his reliance on
19 Defendants’ counsel[‘s] false representation and statement.” *Id.* at 24. Plaintiff
20 contends that the mistake has a material effect upon the agreed exchange of
21 performances because “Plaintiff’s complaint (ECF No. 9) [for] relief seeks more than
22 \$150,000 in money damages” and therefore, this “exchange is not only less desirable
23 for the plaintiff, but also more advantageous to the defendants’ in this matter.” *Id.* at
24 25. Plaintiff contends that he does not bear the risk of the mistake because he “was not
25 neglect on his legal duty.” *Id.* at 26. Plaintiff contends that it would be unconscionable
26 to enforce the settlement agreement because Plaintiff did not have notice of the
27 settlement conference.” *Id.* at 26.

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1 III. Discussion

2 “It is well settled that a district court has the equitable power to enforce
3 summarily an agreement to settle a case pending before it.” *Callie v. Near*, 829 F.2d
4 888, 890 (9th Cir. 1987). “The construction and enforcement of settlement agreements
5 are governed by principles of local law which apply to interpretation of contracts
6 generally.” *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir. 1989). “This is true even
7 though the underlying cause of action is federal.” *United Commercial Ins. Serv., Inc.*
8 *v. Paymaster Corp.*, 962 F.2d 853, 856 (9th Cir. 1992).

9 A factual mistake by one party—a unilateral mistake—provides grounds for
10 rescission in certain limited circumstances. *Donovan v. RRL Corp.*, 27 P.3d 702, 715
11 (Cal. 2001). Where a unilateral mistake of fact is not caused by the opposing party, the
12 party claiming mistake of fact must establish the following facts to obtain rescission of
13 the contract.

14 (1) the [party claiming mistake] made a mistake regarding a basic
15 assumption upon which the [mistaken party] made the contract; (2) the
16 mistake has a material effect upon the agreed exchange of performances
17 that is adverse to [the mistaken party]; (3) [the mistaken party] does not
18 bear the risk of the mistake; and (4) the effect of the mistake is such that
19 enforcement of the contract would be unconscionable.

20 *Id.* at 716.

21 A mistake of fact may support the rescission of an agreement unless the mistake
22 was caused “by the neglect of a legal duty on the part of the person making the
23 mistake.” Cal. Civ. Code § 1577. “[O]rdinary negligence does not constitute neglect
24 of a legal duty within the meaning of Civil Code section 1577.” *Id.* at 718.

25 A concept similar to neglect of a legal duty is described in section 157 of
26 the Restatement Second of Contracts, which addresses situations in which
27 a party’s fault precludes relief for mistake. Only where the mistake results
28 from “a failure to act in good faith and in accordance with reasonable
standards of fair dealing” is rescission unavailable. . . . The mere fact that
a mistaken party could have avoided the mistake by the exercise of
reasonable care does not preclude avoidance on the ground of mistake.

Id. at 717. Failure to negotiate in accordance with reasonable standards of fair dealing
“bars a mistaken party from relief based on a mistake that otherwise would not have

1 been made.” *Id.* at 718. “During the negotiation stage each party is held to a degree of
2 responsibility appropriate to the justifiable expectations of the other.” *Id.*

3 In this case, Plaintiff had prior notice of the settlement conference. Based on that
4 notice, Plaintiff moved the Court for a continuance of the settlement conference because
5 it interfered with a “court settlement conference at the same date and time in the
6 Superior Court of California, County of San Diego, Hall of Justice for Case No. 37-
7 2014-0036-102-CU-WM-CTL at Dept. C-67.” (ECF No. 26 at 1). Pursuant to
8 Plaintiff’s request, the Magistrate Judge reset the settlement conference for February
9 25, the day after Plaintiff’s settlement conference in Superior Court. *See* ECF No. 27.
10 The record reflects that both the Court Clerk and Defendants’ counsel read the case
11 number into the record at the settlement conference. *See* ECF No. 53-2 at 4 (“The
12 Clerk: **Case Number 13CV2455**, *Rios vs. Paramo*, placing settlement on the record .
13 . . . Mr. Sheehy: . . . This settlement covers all claims and allegations and defendants in
14 the case of *Carlos Rios vs. D. Paramo* and others, **13cv2455 in the Southern District**
15 **of California**, and all past or current employees of CDCR” (emphases added)). The
16 record demonstrates that Plaintiff acknowledged that the terms of the settlement
17 agreement were correct. *See id.* at 5 (“Mr. Sheely: Have I read the settlement terms
18 correctly, sir? Mr. Rios: Yes, sir.”). Plaintiff also indicated his consent to settle the
19 case on the record. *See id.* (“The Court: All right. And Mr. Rios, do you agree to the
20 settlement terms? Mr. Rios: Yes. I agree, your honor.”).

21 Under the circumstances of this case, defense counsel was justified in expecting
22 Plaintiff to know the court Plaintiff was appearing in and the case at issue. Defense
23 counsel stated in counsel’s declaration, “I specifically identified Plaintiff’s claims in
24 this case. I discussed Defendants’ legal and factual argument in support of its defense
25 of those claims.” The record reflects that it was only *after* Plaintiff agreed to the
26 settlement terms that defense counsel mentioned that Plaintiff was willing to settle
27 another lawsuit and that it was Plaintiff who stated that the other lawsuit was a property
28 claim. *See id.* (The Court: All right. . . I thank both sides for your efforts to reach this

1 settlement. Mr. Sheehy: Your honor, may I have one more moment? The Court: Yes.
 2 Mr. Sheehy: I apologize. Mr. Rios, during our previous discussions, indicated that he's
 3 willing to dismiss Warden Paramo and Correctional Officer M. . . . [f]rom another
 4 lawsuit. Is that correct, Mr. Rios? Mr. Rios: The property claims, yeah, I'm willing
 5 to.") Although Plaintiff appeared pro se, Plaintiff "must follow the same rules of
 6 procedure that govern other litigants." *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir.
 7 1986); *see also Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986) ("[P]ro se
 8 litigants in the ordinary civil case should not be treated more favorably than parties with
 9 attorneys of record."). "[T]he risk of a mistake must be allocated to a party where the
 10 mistake results from that party's neglect of a legal duty." *Id.* at 717; *see also* Cal. Civ.
 11 Code § 1577. Because Plaintiff's mistake resulted from Plaintiff's neglect of a legal
 12 duty, Plaintiff must bear the risk of the mistake. *See* Cal. Civ. Code § 1577.

13 Even if Plaintiff did not bear the risk of the mistake, Plaintiff is unable to
 14 establish that the mistake impacts the exchange of performance in a manner adverse to
 15 him. To establish such, Plaintiff "must show that the resulting imbalance in the agreed
 16 exchange is so severe that it would be unfair to require [Plaintiff] to perform."
 17 *Donovan*, 27 P.3d at 717. A party can satisfy this requirement by showing that the
 18 exchange is not only less desirable for the mistaken party, but is also more
 19 advantageous to the other party. Rest. 2d Contracts, § 152, com. C. After an arm's-
 20 length negotiation in the presence of the Magistrate Judge, Defendants agreed to pay
 21 Plaintiff \$1,000 in exchange for Plaintiff's dismissal of his civil rights lawsuit. While
 22 the benefit of settling the case may now seem less desirable to Plaintiff, Plaintiff still
 23 benefits from the settlement by receiving \$1,000 from Defendants. Further, the
 24 settlement does not unfairly benefit Defendants; Defendants remain responsible for
 25 paying Plaintiff.

26 Similarly, Plaintiff cannot establish that enforcement of the settlement agreement
 27 would be unconscionable. "An unconscionable contract ordinarily involves both a
 28 procedural and substantive element: (1) oppression or surprise due to unequal

1 bargaining power, and (2) overly harsh or one-sided results.” *Donovan*, 27 P.3d at 723.
2 “A contractual term is substantively suspect if, viewed at the time the contract was
3 formed, it allocates the risks in an unreasonable or unexpected manner.” *Zullo v.*
4 *Superior Court*, 127 Cal. Rptr. 3d 461, 465 (Ct. App. 2011). With respect to the
5 procedural element, Plaintiff initiated this action and participated in the settlement
6 conference. During that conference, Plaintiff had options other than to settle;
7 specifically, Plaintiff could have proceeded with the litigation against defendants or
8 demanded a higher settlement amount. The Magistrate Judge was present during the
9 settlement conference as a neutral party and found that the parties had reached a
10 settlement. (ECF No. 34). There was no oppression or surprise due to unequal
11 bargaining power despite Plaintiff’s pro se and incarcerated status. As to the
12 substantive element, the settlement agreement is not “overly harsh” or “one-sided.” *See*
13 *Donovan*, 27 P.3d at 723. Plaintiff agreed to dismiss his claims against Defendants in
14 exchange for \$1,000. Plaintiff stated that he understood and agreed to the settlement
15 announced in open court. The settlement agreement is not unconscionable.

16 Plaintiff cannot prove all four *Donovan* factors required to support rescission in
17 the case, therefore, the Court concludes that the settlement agreement should be
18 enforced.

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1 **IV. Conclusion**

2 IT IS HEREBY ORDERED that Plaintiff's Application for Reconsideration is
3 denied.

4 IT IS FURTHER ORDERED that the Motion to Enforce Settlement is granted.
5 (ECF No. 53). No later than fourteen (14) days from the date of this Order, Defendants
6 shall pay Plaintiff the sum of money stated in the Memorandum of Settlement and file
7 a notice with the Court certifying that the money has been paid. Thereafter, the Court
8 will dismiss this action with prejudice.

9 DATED: December 10, 2015

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11 WILLIAM Q. HAYES
12 United States District Judge
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